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6 Attorneys for Plaintiffs
 7

8 **UNITED STATES DISTRICT COURT**
 9 **NORTHERN DISTRICT OF CALIFORNIA – OAKLAND**

10 CAROL MOORHOUSE and JAMES
 11 MOORHOUSE,

12 Plaintiffs,

13 vs.

14 BAYER HEALTHCARE
 15 PHARMACEUTICALS, INC.; BAYER
 16 HEALTHCARE LLC; GENERAL ELECTRIC
 COMPANY; GE HEALTHCARE, INC.;
 17 COVIDIEN, INC.; MALLINCKRODT, INC.;
 BRACCO DIAGNOSTICS, INC.; McKESSON
 CORPORATION; MERRY X-RAY
 18 CHEMICAL CORP.; and DOES 1 through 35

19 Defendants.

Case No: 4:08-cv-01831-SBA

(San Francisco County Superior Court,
 Case No.: CGC-08-472978)

**PLAINTIFFS' OPPOSITION TO
 DEFENDANTS GENERAL ELECTRIC
 COMPANY AND GE HEALTHCARE INC.'S
 APPLICATION TO STAY ALL
 PROCEEDINGS PENDING TRANSFER TO
 MDL**

Date: June 10, 2008
 Time: 1:00 p.m.
 Courtroom: 3, Third Floor

20
 21 Plaintiffs file this Opposition to Defendants' Application to Stay for consideration with their
 22 Motion for Remand. Both motions are set for hearing on June 10, 2008. Plaintiffs request that their
 23 Motion for Remand be considered before Defendants' Application to Stay. Should the Court grant
 24 Plaintiffs' Motion for Remand, Defendants' Application to Stay will be rendered moot.

25 **BACKGROUND**

26 Mrs. Moorhouse suffers from Nephrogenic Systemic Fibrosis ("NSF"), an incurable and life-
 27 threatening disease. She contracted the disease as a result of receiving gadolinium based contrast

1 agents ("GBCA") in connection with MRI and MRA procedures. The GBCAs were manufactured by
 2 General Electric Company, GE Healthcare Inc. ("GE"), Bayer Healthcare Pharmaceuticals, Inc., Bayer
 3 Healthcare LLC ("Bayer"), Covidien Inc., Mallinckrodt, Inc. and Bracco Diagnostics Inc., and
 4 distributed by McKesson Corporation ("McKesson") and Merry X-Ray Chemical Corporation ("Merry
 5 X-Ray"). Complaint at ¶¶43-62.

6 Mrs. Moorhouse and her husband, James Moorhouse, filed suit in San Francisco Superior
 7 Court on March 5, 2008 against two in-state defendants (McKesson and Merry X-Ray) and seven out-
 8 of-state defendants (GE, Bayer, Covidien Inc., Mallinckrodt, Inc. and Bracco Diagnostics Inc.) The
 9 GE Defendants ("Removing Defendants") removed this matter on April 4, 2008. Removing
 10 Defendants allege in their removal that the two in-state defendants are fraudulently-joined and,
 11 therefore, their California residencies should be ignored for purposes of determining diversity
 12 jurisdiction. Plaintiffs filed their Motion for Remand on April 22, 2008 (Docket No. 17).

13 On April 24, 2008, the GE Defendants filed their Application to Stay All Proceedings Pending
 14 Transfer to the MDL. The MDL, known as In re: Gadolinium Contrast Dyes Products Liability
 15 Litigation ("Gadolinium MDL"), was created on February 27, 2008 and is presided over by the
 16 Honorable Dan A. Polster of the Northern District of Ohio.

17 On April 23, 2008, this case was subjected to a Conditional Transfer Order No.5 ("CTO-5").
 18 Plaintiffs filed a Notice of Opposition to CTO-5 on May 7, 2008. Exhibit A to Declaration of Laura
 19 Brandenberg. Plaintiffs' will file and serve their Motion and Brief to Vacate the Conditional Transfer
 20 Order with the Judicial Panel on Multidistrict Litigation by May 23, 2008. No date for hearing on
 21 Plaintiffs' Motion and Brief to Vacate the Conditional Transfer Order has been set by the Panel.
 22 Pursuant to Rule 7.4(c) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, the
 23 CTO is stayed pending further order of the Panel. Exhibit B and C to Declaration of Laura
 24 Brandenberg.

25 Both the Motion for Remand and Application to Stay will be heard on June 10, 2008.

26 ///

27 ///

28

LEGAL ANALYSIS

A. Plaintiffs' Motion for Remand Presents a Preliminary Jurisdictional Issue That Should Be Decided by This Court Prior to Defendants' Application to Stay.

4 Requests for transfer pending before the MDL Panel do not limit the pre-trial jurisdiction of the
5 district court. *Conroy v. Fresh Del Monte Produce Inc.*, 325 F. Supp. 2d 1049, 1053 (N.D. Cal. 2004);
6 *Gerber v. Bayer Corp.*, 2008 U.S. Dist. Lexis 12174, *5 (Case No. 07-05918, N.D. Cal. 2008); *Rivers*
7 *v. Walt Disney Co.*, 980 F. Supp. 1358, 1359 (C.D. Cal. 1997). District Courts have discretion to
8 decide whether to stay a case pending a decision from the MDL Panel. *Conroy*, 325 F. supp. 2d at
9 1053. “A district judge should not automatically stay discovery, postpone rulings on pending motions,
10 or generally suspend further rulings upon a parties' motion to the MDL Panel for transfer and
11 consolidation.” *Rivers* 980 F. Supp. at 1360.

12 A motion to remand is considered a preliminary jurisdictional issue that should be resolved as
13 early as possible. *Conroy*, 325 F. supp. 2d at 1053. “Where case-specific issues of fact or law are
14 raised by a motion to remand and a defendant has clearly failed to meet the substantive or procedural
15 requirements for removing a state court action, ‘the court should promptly complete its consideration
16 and remand the case to state court.’” *Edsall v. Merck & Co.*, 2005 U.S. Dist. Lexis 42408, *9 (Case
17 No. 5-2244, N.D. Cal. 2005) (citations omitted). Plaintiffs’ Motion for Remand clearly demonstrates
18 that GE has failed to meet the requirements for removal. Therefore, Plaintiffs’ Motion for Remand
19 should be decided prior to Defendants’ Application to Stay.

**B. If the Court Considers Defendants' Stay Application With the Motion for Remand,
The Application Should Be Denied.**

22 Defendants rely on *Rivers v. Walt Disney Co.*, 980 F. Supp. 1358 (C.D. Cal. 1997) in support
23 of their argument that Courts simply look to considerations of judicial economy and prejudice to the
24 parties when determining an application to stay. Application p.3. However, *Rivers* did not involve
25 the jurisdictional issue present in Plaintiffs' competing motion for remand, and further analysis is
26 necessary.

In *Conroy v. Fresh Del Monte Produce Inc*, 325 F. Supp. 2d 1049 (N.D. Cal. 2004), this Court

1 set out a three step methodology for addressing competing motions for remand and motions to stay as
 2 follows:

- 3 1. First, the court should give preliminary scrutiny to the motion to remand, promptly
 4 completing its consideration and remanding the case if removal was improper.
- 5 2. Second, if the jurisdictional issue appears factually or legally difficult, the court
 6 should determine whether identical or similar jurisdictional issues have been raised
 7 in other cases that have been or may be transferred to the MDL.
- 8 3. Finally, and only if the second inquiry is reached and answered affirmatively, the
 9 court should consider staying the action, weighing the following factors: a) interests
 10 of judicial economy; b) hardship and inequity to the moving party if the action is
 11 not stayed; and c) potential prejudice to the non-moving party.

12 *See Conroy v. Fresh Del Monte*, 325 F. Supp. 2d 1049, 1053; *Meyers v. Bayer AG*, 143 F. Supp 2d
 13 1044, 1048-1049 (E.D.Wis.1002); *Strong v. Merck & Co.*, 2005 U.S. Dist. LEXIS 2413, at *7 (Case
 14 No. 03-813, N.D. Cal. 2005); *Edsall*, 2005 U.S. Dist. LEXIS 42408 at *8.

15 As explained above, removal was clearly improvident and the case should be remanded
 16 immediately.

17 In the event that the Court views the jurisdictional issues as factually or legally difficult, it
 18 should still address Plaintiffs' Motion to Remand first because there is no evidence that identical or
 19 similar jurisdictional issues have been raised in other cases that have been or may be transferred to the
 20 MDL.

21 Only if the Court has first determined that the jurisdictional issues are legally or factually
 22 difficult, and has further determined that those issues are common to others in or pending transfer to
 23 the MDL, should the Court then consider a stay pending transfer. The following factors should then
 24 be weighed: a) interests of judicial economy; b) hardship and inequity to the moving party if the action
 25 is not stayed; and c) potential prejudice to the non-moving party.

26 ***1. Stay and Transfer Results in Inefficiency***

27 It is unlikely that more than a few actions will be transferred to the Gadolinium MDL which

1 will involve the issue of whether, *under California law*, it is possible for Plaintiffs to assert negligence
2 and CLRA claims against McKesson and Merry X-Ray. Those issues are specific to California law
3 and to this case, and can be most efficiently decided by a California court. In denying Defendants'
4 motion to stay in *Conroy* the court explained that, "[t]his Court is readily familiar with federal law,
5 Ninth Circuit law, and California law, the laws applicable to Plaintiff's motion and Complaint.
6 Moreover, the parties have already fully briefed the issue of remand. Thus, staying the motion will not
7 save either party any time. Finally, it is in the interest of judicial economy to decide issues of
8 jurisdiction as early in the litigation process as possible. If federal jurisdiction does not exist, the case
9 can be remanded before federal resources are further expended. In the Court's view, judicial economy
10 dictates a present ruling on the remand issue." *Conroy*, 325 F. Supp. 2d at 1054. The same rationale
11 applies here. This Court is better equipped to efficiently deal with California legal issues than is the
12 Gadolinium MDL Court in Ohio. The parties will have fully briefed the jurisdictional issues and will
13 be available to argue them on June 10. The antithesis of efficiency would be to refer the motion to a
14 judge in Ohio for decision months in the future.

15 ***2. Stay and Transfer Results in no hardship to GE but is Prejudicial to Plaintiffs***

16 GE will not suffer any hardship if this matter is not stayed, and has not asserted that it will.
17 The same cannot be said for Plaintiff. Carol Moorhouse suffers from a progressive and incurable
18 disease. If this Court stays Plaintiffs' case pending transfer to the MDL, Plaintiffs will suffer delays
19 waiting for the transfer to occur. The conditional transfer order has been stayed pending further order
20 from the Panel. If the Stay is granted, Plaintiffs' case will not transfer to the MDL until an order
21 from the Panel is issued. A hearing on Plaintiffs' Motion to Vacate the CTO has not been set, and any
22 order from the Panel could take several months. If this case is transferred to the MDL, it is likely that
23 it would then take several additional months for the MDL Court to hear and decide Plaintiffs' remand
24 motion, resulting in prejudice to Plaintiffs.

25 ///

26 ///

27 ///

28

CONCLUSION

For the foregoing reasons, Plaintiffs' respectfully request that Plaintiffs' Motion for Remand be granted, and Defendants' Petition to Stay be denied as moot.

Dated: May 20, 2008

LEVIN SIMES KAISER & GORNICK LLP

By: s/ Lawrence J. Gornick
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8 Attorneys for Plaintiffs

9
10 **UNITED STATES DISTRICT COURT**
11
12 **NORTHERN DISTRICT OF CALIFORNIA – OAKLAND**

13 CAROL MOORHOUSE and JAMES
14 MOORHOUSE,

15 Plaintiffs,

16 vs.

17 BAYER HEALTHCARE
18 PHARMACEUTICALS, INC.; BAYER
19 HEALTHCARE LLC; GENERAL ELECTRIC
COMPANY; GE HEALTHCARE, INC.;
COVIDIEN, INC.; MALLINCKRODT, INC.;
BRACCO DIAGNOSTICS, INC.; McKESSON
CORPORATION; MERRY X-RAY
CHEMICAL CORP.; and DOES 1 through 35

Defendants.

Case No: 4:08-cv-01831-SBA

(San Francisco County Superior Court,
Case No.: CGC-08-472978)

**DECLARATION OF LAURA M.
BRANDENBERG IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO GENERAL
ELECTRIC COMPANY AND GE
HEALTHCARE INC.'S APPLICATION TO
STAY ALL PROCEEDINGS PENDING
TRANSFER TO MDL**

Date: June 10, 2008
Time: 1:00 p.m.
Courtroom: 3, Third Floor

20
21 I, Laura Brandenberg, declare as follows:

22 1. I am licensed to practice before this Court and an associate in the law firm of
23 Levin Simes Kaiser & Gornick LLP, attorneys of record for Plaintiffs in this matter. I have personal
24 knowledge of the facts set forth below, and would and could competently testify to each of them if
25 called upon to do so.

26 2. Attached as Exhibit A is a true and correct copy of Plaintiffs' Notice of Opposition to
27 CTO-5, filed May 7, 2008.

3. Attached as Exhibit B is a true and correct copy of the JPML's letter dated May 8, 2008 regarding Plaintiffs' Motion and Brief to Vacate and briefing schedule.

4. Attached as Exhibit C is a true and correct copy of the JPML Conditional Transfer Order (CTO-5).

I declare under penalty of perjury that the foregoing is true and correct. Executed this 20th day of May 2008 in San Francisco, CA.

s/ Laura Brandenberg
Laura Brandenberg, Esq.

EXHIBIT A

**BEFORE THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION**

**MDL No. 1909 – In re Gadolinium Contrast Dyes Products Liability
Litigation**

Moorehouse v. Bayer Healthcare Pharmaceuticals, Inc., et al.
N.D. California, C.A. No. 4:08-cv-01831-SBA

NOTICE OF OPPOSITION TO CTO-5

I represent plaintiffs in the above captioned action which is included on the conditional transfer order (CTO-5). Plaintiff submits this opposition to the conditional transfer order. I understand that the motion and brief to vacate are due in 15 days.

Sincerely,


Laura Brandenberg, Esq.
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44 Montgomery Street, 36 Floor
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lbrandenberg@lskg-law.com
Counsel for Plaintiffs

EXHIBIT B

**UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION**

CHAIRMAN:
Judge John G. Heyburn II
United States District Court
Western District of Kentucky

MEMBERS:
Judge D. Lowell Jensen
United States District Court
Northern District of California

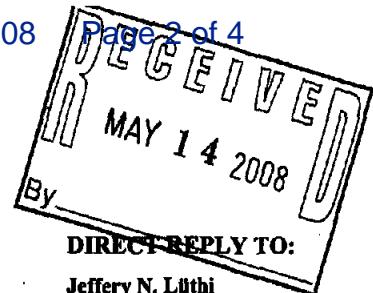
Judge J. Frederick Motz
United States District Court
District of Maryland

Judge Robert L. Miller, Jr.
United States District Court
Northern District of Indiana

Judge Kathryn H. Vratil
United States District Court
District of Kansas

Judge David R. Hansen
United States Court of Appeals
Eighth Circuit

Judge Anthony J. Scirica
United States Court of Appeals
Third Circuit



DIRECT REPLY TO:

Jeffery N. Lüthi
Clerk of the Panel
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Thurgood Marshall Federal
Judiciary Building
Room G-255, North Lobby
Washington, D.C. 20002

Telephone: (202) 502-2800
Fax: (202) 502-2888
http://www.jpmi.uscourts.gov

May 8, 2008

Laura Brandenberg, Esq.
LEVIN SIMES KAISER & GORNICK LLP
44 Montgomery Street
36th Floor
San Francisco, CA 94104

Re: MDL No. 1909 -- IN RE: Gadolinium Contrast Dyes Products Liability Litigation

Carol Moorhouse, et al. v. Bayer Healthcare Pharmaceuticals, Inc., et al.,
N.D. California, C.A. No. 4:08-1831 (Judge Saundra Brown Armstrong)

Motion and Brief Due on or before: May 23, 2008

Dear Ms. Brandenberg:

We have received and filed your Notice of Opposition to the proposed transfer of the referenced matter for coordinated or consolidated pretrial proceedings. In accordance with Rule 7.4(c) of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435 (2001), the conditional transfer order is stayed until further order of the Panel. You must adhere to the following filing requirements:

- 1) Your Motion and Brief to Vacate the Conditional Transfer Order must be received in the Panel office by the due date listed above. An ORIGINAL and FOUR copies of all pleadings, as well as a COMPUTER GENERATED DISK of the pleading in Adobe Acrobat (PDF) format, are currently required for filing. Fax transmission of your motion and brief will not be accepted. See Panel Rule 5.12(d). Counsel filing oppositions in more than one action are encouraged to consider filing a single motion and brief with an attached schedule of actions.
- 2) Papers must be served on the enclosed Panel Service List. Please attach a copy of this list to your certificate of service. (Counsel who have subsequently made appearances in your action should be added to your certificate of service).
- 3) Rule 5.3 corporate disclosure statements are due within 11 days of the filing of the motion to vacate.
- 4) Failure to file and serve the required motion and brief within the allotted 15 days will be considered a withdrawal of the opposition and the stay of the conditional transfer order will be lifted.

Any recent official change in the status of a referenced matter should be brought to the attention of the clerk's office as soon as possible by facsimile at (202) 502-2888. Your cooperation would be appreciated.

Very truly,

Jeffery N. Lüthi
Clerk of the Panel

By Dana L. Stewart
Deputy Clerk

Enclosure

cc: Panel Service List
Transferee Judge: Judge Dan A. Polster
Transferor Judge: Judge Saundra Brown Armstrong

JPML Form 37

**IN RE: GADOLINIUM CONTRAST DYES PRODUCTS
LIABILITY LITIGATION**

MDL No. 1909

PANEL SERVICE LIST (Excerpted from CTO-5)

Carol Moorhouse, et al. v. Bayer Healthcare Pharmaceuticals, Inc., et al.,
N.D. California, C.A. No. 4:08-1831 (Judge Saundra Brown Armstrong)

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EXHIBIT C

Inasmuch as no objection is pending at this time, the stay is lifted.

JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

APR 23 2008

FILED
CLERK'S OFFICE

CLERK'S OFFICE
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

UNITED STATES JUDICIAL PANEL
on
MULTIDISTRICT LITIGATION

IN RE: GADOLINIUM CONTRAST DYES PRODUCTS
LIABILITY LITIGATION

CLERK'S OFFICE
JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION
Cleveland, Ohio
MAY 15, 2008
MEL No. 1009
OF THE
NORTHERN DISTRICT OF OHIO

(SEE ATTACHED SCHEDULE)

CONDITIONAL TRANSFER ORDER (CTO-5)

On February 27, 2008, the Panel transferred 20 civil actions to the United States District Court for the Northern District of Ohio for coordinated or consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407. *See* ___ F.Supp.2d ___ (J.P.M.L. 2008). Since that time, 59 additional actions have been transferred to the Northern District of Ohio. With the consent of that court, all such actions have been assigned to the Honorable Dan A. Polster.

It appears that the actions on this conditional transfer order involve questions of fact that are common to the actions previously transferred to the Northern District of Ohio and assigned to Judge Polster.

Pursuant to Rule 7.4 of the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, 199 F.R.D. 425, 435-36 (2001), these actions are transferred under 28 U.S.C. § 1407 to the Northern District of Ohio for the reasons stated in the order of February 27, 2008, and, with the consent of that court, assigned to the Honorable Dan A. Polster.

This order does not become effective until it is filed in the Office of the Clerk of the United States District Court for the Northern District of Ohio. The transmittal of this order to said Clerk shall be stayed 15 days from the entry thereof. If any party files a notice of opposition with the Clerk of the Panel within this 15-day period, the stay will be continued until further order of the Panel.

A CERTIFIED TRUE COPY

MAY - 9 2008

ATTEST: *[Signature]*
FOR THE JUDICIAL PANEL ON
MULTIDISTRICT LITIGATION

FOR THE PANEL:

[Signature]
Jeffrey N. Lüthi
Clerk of the Panel

IN RE: GADOLINIUM CONTRAST DYES PRODUCTS
LIABILITY LITIGATION

MDL No. 1909

SCHEDULE CTO-5 - TAG-ALONG ACTIONS

DIST. DIV. C.A. #CASE CAPTION

CALIFORNIA NORTHERN

CAN 4 08-1831

Carol Moorhouse, et al. v. Bayer Healthcare Pharmaceuticals, Inc., et al.
Opposed 5/8/08

NEW YORK SOUTHERN

NYS 1 08-3385

David W. Lafforthun, et al. v. GE Healthcare, Inc., et al.

NYS 1 08-3387

Shiral Stidham v. General Electric Co., et al.

NYS 1 08-3389

Pavel Mamut, etc. v. General Electric Co., et al.

NYS 1 08-3427

Vauna Kathleen Ratner, et al. v. General Electric Co., et al.

PENNSYLVANIA EASTERN

PAE 2 08-1605

Dorothy Karros, et al. v. General Electric Co., et al.

TENNESSEE MIDDLE

TNM 1 08-20

Sandra Litaker v. General Electric Co., et al.

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5
UNITED STATES DISTRICT COURT

6
7 **NORTHERN DISTRICT OF CALIFORNIA - OAKLAND**

8
9 CAROL MOORHOUSE and JAMES
10 MOORHOUSE,

11 Plaintiffs,

12 vs.

13 BAYER HEALTHCARE
14 PHARMACEUTICALS, INC.; BAYER
15 HEALTHCARE LLC; GENERAL ELECTRIC
16 COMPANY; GE HEALTHCARE, INC.;
17 COVIDIEN, INC.; MALLINCKRODT, INC.;
18 BRACCO DIAGNOSTICS, INC.; McKESSON
19 CORPORATION; MERRY X-RAY
20 CHEMICAL CORP.; and DOES 1 through 35

21 Defendants.

22 Case No: 4:08-cv-01831-SBA

23 (**San Francisco County Superior Court,**
24 **Case No.: CGC-08-472978**)

25
26 **[PROPOSED] ORDER DENYING
27 DEFENDANTS GENERAL ELECTRIC
28 COMPANY AND GE HEALTHCARE INC.'S
29 APPLICATION TO STAY ALL
30 PROCEEDINGS PENDING TRANSFER TO
31 MDL**

32 Date: June 10, 2008

33 Time: 1:00 p.m.

34 Courtroom: 3, Third Floor

35
36 Before the Court is an Application to Stay all proceedings pending transfer to the Multi-District
37 Litigation, known as In re: Gadolinium Contrast Dyes Products Liability Litigation ("MDL"), filed by
38 Defendants General Electric Company and GE Healthcare ("GE"). Also before the Court is Plaintiffs'
39 Motion for Remand. After reading and considering the arguments presented by the parties, and for the
40 reasons that follow, the court DENIES GE's Application to Stay.

41
42 **I. BACKGROUND**

43
44 Plaintiff Carol Moorhouse has nephrogenic systemic fibrosis ("NSF"). Plaintiffs allege that

1 Mrs. Moorhouse contracted NSF as a result of receiving injections of gadolinium-based contrast
 2 agents (“GBCA”) in connection with MRI and MRA procedures. Plaintiffs’ complaint alleges causes
 3 of action for product liability-failure to warn, negligence, fraud, negligent misrepresentation,
 4 violations of the CLRA and a claim for loss of consortium. Defendants Bayer HealthCare
 5 Pharmaceuticals, Inc., Bayer HealthCare LLC, General Electric Company, GE Healthcare, Inc.,
 6 Covidien, Inc., Mallinckrodt, Inc. and Bracco Diagnostics manufacture GBCAs. Defendants
 7 McKesson and Merry X-Ray distribute GBCAs.

8 Plaintiffs filed this action on March 5, 2008 in San Francisco Superior Court. GE removed this
 9 matter on April 4, 2008 on the basis of diversity jurisdiction. Plaintiffs filed their Motion for Remand
 10 on April 22, 2008. GE filed their Application to Stay All Proceedings Pending Transfer to the MDL
 11 on April 24, 2008. On May 7, 2008, Plaintiffs filed their Notice of Opposition to CTO-5 with the
 12 Judicial Panel on Multidistrict Litigation. Pursuant to Rule 7.4(c) of the Rules of Procedure of the
 13 Judicial Panel on Multidistrict Litigation, the CTO is currently stayed pending further order of the
 14 Panel.

15 **II. LEGAL STANDARD**

16 Requests for transfer pending before the MDL Panel do not limit the pre-trial jurisdiction of the
 17 district court. *Conroy v. Fresh Del Monte Produce Inc.*, 325 F. Supp. 2d 1049, 1053 (N.D. Cal. 2004);
 18 *Gerber v. Bayer Corp.*, 2008 U.S. Dist. Lexis 12174, *5 (Case No. 07-05918, N.D. Cal. 2008); *Rivers*
 19 *v. Walt Disney Co.*, 980 F. Supp. 1358, 1359 (C.D. Cal. 1997). District Courts have discretion to
 20 decide whether to stay a case pending a decision from the MDL Panel. *Conroy*, 325 F. supp. 2d at
 21 1053. “A district judge should not automatically stay discovery, postpone rulings on pending motions,
 22 or generally suspend further rulings upon a parties’ motion to the MDL Panel for transfer and
 23 consolidation.” *Rivers* 980 F. Supp. at 1360.

24 A motion to remand is considered a preliminary jurisdictional issue that should be resolved as
 25 early as possible. *Conroy*, 325 F. supp. 2d at 1053; *Rivers* 980 F. Supp. at 1361-1362. “Where case-
 26 specific issues of fact or law are raised by a motion to remand and a defendant has clearly failed to
 27 meet the substantive or procedural requirements for removing a state court action, ‘the court should

1 promptly complete its consideration and remand the case to state court.”” *Edsall v. Merck & Co.*, 2005
 2 U.S. Dist. Lexis 42408, *9 (Case No. 5-2244, N.D. Cal. 2005) (citations omitted).

3 III. ANALYSIS

4 Courts employ a three step methodology in considering a motion to stay pending transfer to an
 5 MDL prior to a motion for remand:

- 6 1) Preliminary scrutiny is given to the motion for remand, and the case is remanded if removal
 7 was improper;
- 8 2) If the jurisdictional issues appear factually or legally difficult, consideration is given to
 9 whether identical or similar jurisdictional issues have been raised in other cases that have
 10 been or may be transferred to the MDL;
- 11 3) If the second inquiry is reached and answered affirmatively, the court weighs the following
 12 factors: a) interests of judicial economy; b) hardship and inequity to the moving party; and
 13 c) potential prejudice to the non-moving party.

14 *Conroy v. Fresh Del Monte*, 325 F. Supp. 2d 1049, 1053; *Meyers v. Bayer AG*, 143 F. Supp 2d 1044,
 15 1048-1049 (E.D.Wis.1002); *Strong v. Merck & Co.*, 2005 U.S. Dist. LEXIS 2413, at *7 (Case No. 03-
 16 813, N.D. Cal. 2005); *Edsall*, 2005 U.S. Dist. LEXIS 42408 at *8.

17 In consideration of the first factor, the Court finds that removal was improper for the reasons
 18 set forth in Plaintiffs’ Motion for Remand, and REMANDS this case to San Francisco Superior Court.
 19 Thus, GE’s Application to Stay need not be considered.

20 Even if the Court considered GE’s Application to Stay with Plaintiffs’ competing Motion for
 21 Remand, such a stay would not be granted.

22 In consideration of the second factor, there is no evidence that other cases in the MDL involve
 23 the jurisdictional issue of fraudulent joinder of California distributors McKesson and Merry X-Ray.

24 Finally, granting GE’ Application to Stay would result in inefficiency and prejudice to
 25 Plaintiffs. The jurisdictional issue involved here is whether California distributor defendants
 26 McKesson and Merry X-Ray have been fraudulently joined. The claims as pled against these
 27 defendants, including negligence and violation of the CLRA, employ California law. As previously
 28

1 explained by this Court:

2 This Court is readily familiar with federal law, Ninth Circuit law, and
3 California law, the laws applicable to Plaintiff's motion and Complaint.
4 Moreover, the parties have already fully briefed the issue of remand.
5 Thus, staying the motion will not save either party any time. Finally, it is
6 in the interest of judicial economy to decide issues of jurisdiction as early
7 in the litigation process as possible. If federal jurisdiction does not exist,
8 the case can be remanded before federal resources are further expended. In
9 the Court's view, judicial economy dictates a present ruling on the remand
10 issue.

8 *Conroy*, 325 F. Supp. 2d at 1054

9 The same analysis applies here. This Court is better equipped to determine California legal
10 issues than is the MDL Court in Ohio.

11 Finally, GE has not asserted that it will suffer hardship if this matter is not stayed. On the
12 contrary, Plaintiffs will suffer delays waiting for a transfer to occur. Importantly, the conditional
13 transfer order has been stayed pending further order from the Panel. If GE's stay is granted, Plaintiffs
14 case will not be transferred to the MDL until an order from the Panel is issued. This could take several
15 months. If this case is then transferred to the MDL, it will take several additional months for
16 Plaintiffs' motion for remand to be heard. Such delays are prejudicial to Plaintiff.

17 IV. CONCLUSION

18 The Court finds that Plaintiffs' Motion for Remand should be considered prior to GE's Motion
19 to Stay. Removal was not proper, there is no evidence that identical or similar jurisdictional issues
20 have been, or will be raised in the MDL, and a stay and transfer would result in inefficiency and
21 prejudice to Plaintiffs. Having first considered and GRANTED Plaintiffs' Motion for Remand, the
22 Court DENIES GE's Application to Stay All proceedings Pending Transfer to the MDL as MOOT.

23 IT IS SO ORDERED.

24
25 Dated: _____

26 _____ HONORABLE SAUNDRA B. ARMSTRONG
27
28

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6 Attorneys for Plaintiffs

7 **UNITED STATES DISTRICT COURT**

8 **NORTHERN DISTRICT OF CALIFORNIA - OAKLAND**

9 CAROL MOORHOUSE and JAMES
10 MOORHOUSE,

11 Plaintiffs,

12 vs.

13 BAYER HEALTHCARE
14 PHARMACEUTICALS, INC.; BAYER
15 HEALTHCARE LLC; GENERAL ELECTRIC
16 COMPANY; GE HEALTHCARE, INC.;
17 COVIDIEN, INC.; MALLINCKRODT, INC.;
18 BRACCO DIAGNOSTICS, INC.; McKESSON
19 CORPORATION; MERRY X-RAY
20 CHEMICAL CORP.; and DOES 1 through 35

21 Defendants.

22 Case No: 4:08-cv-01831 SBA

23 (San Francisco County Superior Court,
24 Case No.: CGC-08-472978)

25 **PROOF OF SERVICE**

1 I certify that I am over the age of 18 years and not a party to the within action; that my
 2 business address is 44 Montgomery Street, 36th Floor, San Francisco, CA 94104; and that on this date I
 3 served a true copy of the document(s) entitled:

4 Service was effectuated by forwarding the above-noted document in the following manner:

5 **PLAINTIFFS' OPPOSITION TO DEFENDANTS GENERAL ELECTRIC COMPANY AND**
 6 **GE HEALTHCARE INC.'S APPLICATION TO STAY ALL PROCEEDINGS PENDING**
 7 **TRANSFER TO MDL; DECLARATION OF LAURA M. BRANDENBERG IN SUPPORT OF**
 8 **PLAINTIFFS' OPPOSITION TO GENERAL ELECTRIC COMPANY AND GE**
 9 **HEALTHCARE INC.'S APPLICATION TO STAY ALL PROCEEDINGS PENDING**
 10 **TRANSFER TO MDL; [PROPOSED] ORDER DENYING DEFENDANTS GENERAL**
 11 **ELECTRIC COMPANY AND GE HEALTHCARE INC.'S APPLICATION TO STAY ALL**
 12 **PROCEEDINGS PENDING TRANSFER TO MDL**

10 **By Regular Mail** in a sealed envelope, addressed as noted above, with postage fully
 11 prepaid and placing it for collection and mailing following the ordinary business practices of Levin
 12 Simes Kaiser & Gornick.

13 **By Electronic Mail**

14 **By Hand Delivery** in a sealed envelope, addressed as noted above, through services
 15 provided by the office of Levin Simes Kaiser & Gornick.

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 19 services provided by (Federal Express, UPS,) and billed to Levin Simes Kaiser & Gornick.

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2 the instructions set forth in the Local Rules for the United States District Court for the Central District
3 of California to:

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10
11 I declare under penalty of perjury that the foregoing is true and correct. Executed this 20th day
12 of May 2008 at San Francisco, California.

13
14 /s/ Scheryl Warr
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